



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 28, 1996

Ms. Priscilla A. Lozano
The University of Texas System
Office of General Counsel
201 West Seventh Street
Austin, Texas 78701-2981

OR96-1051

Dear Ms. Lozano:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned RQ-687.

The University of Texas received a request for, among other things, information regarding sexual harassment complaints and investigations. We addressed the availability of most of the information in Open Records Letter No. 94-188 (1994). We reserved a determination on the application of the court's decision in *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), to certain records identified as Exhibits B and C, to be ruled upon at a later date. We now address the records submitted as Exhibits B and C.

Section 552.101 excepts from required public disclosure information that is considered confidential by law, either constitutional, statutory, or by judicial decision. Information may be withheld under section 552.101 in conjunction with common-law privacy only if the information is highly intimate or embarrassing *and* it is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigatory files at issue in *Ellen* contained individual witness and victim statements, an affidavit given by the individual accused of the misconduct in response to the allegations, and the conclusions of the board of inquiry that conducted the investigation. *Id.* The court ordered the release of the

affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest in this matter was sufficiently served by the disclosure of these documents. *Id.* at 525. In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

The *Ellen* decision controls the release of the documents you have submitted for our review.¹ Exhibits B and C contain documents relating to numerous sexual harassment investigations, including complaints, reprimands, investigation records, witness statements, and summary investigation reports. We believe there is a legitimate public interest in the substance of the complaints regarding the allegations of sexual harassment. In many instances, there is an accurate summary of the alleged sexual harassment; in other cases, no one record accurately reflects the substance of the allegations. In all cases, you must withhold the identity of the victims and witnesses to the alleged harassment. We have marked the type of information that you must withhold in accordance with the court's holding in *Ellen*. The remaining information must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/rho

Ref.: ID# 38562

¹Some of the documents submitted in Exhibit C-2 are duplicates of education records which this office ruled on in Open Records Letter No. 94-188 (1994). This ruling only addresses the application of the *Ellen* decision on these records. To the extent there is conflict, the Family Educational Rights and Privacy Act of 1974 (FERPA) prevails. See 20 U.S.C. § 1232g(b)(1); Open Records Decision No. 634 (1995).

Enclosures: Marked documents

cc: Mr. Robert Ovetz
P.O. Box 49814
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(w/o enclosures)